IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.373 OF 2006
WITH
CIVIL APPLICATION NO.811 OF 2006

Mr.Binoy Bhushan Dey & Anr. ...Appellants.

V/s.

State of Maharashtra & Ors. ..Respondents.

Ms.Deepa Chavan with C.J.Motwani for appellants.

Mr.K.K.Tated, AGP for respondent No.1-State.

Mr.Dipendra Dey, respondent No.2 in person-present.

Mr. A.K.Abhyankar, Sr.Advocate appointed as amicus curiae with Mr.S.M.Gorwadkar, for respondent No.3.

CORAM: A.M.KHANWILKAR,J
DATE : SEPTEMBER 25, 2006.

P.C. :

1. This appeal from order emanates from the Judgment and Order passed by the City Civil Court, Greater Bombay dated 23rd March, 2006 in Notice of Motion No.129 of 2006. On merits, I have already expressed my view in my order dated 15th June, 2006, rejecting the grounds raised before this Court to question the correctness of the impugned Judgment and Order.

2. As a consequence of dismissal of the appeal on merits, the appellants, being contemnors, would have been required to undergo sentence awarded by the

lower Court for a period of three months. However, as the appellants gave assurance before this Court on 15th June, 2006, that they are willing to purge the contempt by paying sum of Rs.9 Lakhs to the respondent No.3 unconditionally; coupled with the fact that the appellants are senior citizens and have been embroiled in litigation on account of matrimonial dispute between the respondent Nos. 2(son) and 3(daughter-in-law), it was felt appropriate to show indulgence to the appellants. The appellants gave assurance before this Court that sum of Rs.2 Lakhs will be paid to the respondent No.3 within seven days from the date of the order and the balance sum of Rs.7 Lakhs will be paid to the respondent No.3 at the time of presenting Consent Terms to be filed before the Family Court in proceedings pending between the respondent Nos. 2 and 3 inter se. In my order dated 15th June, 2006, I had made it clear that the Consent Terms will have to be filed within 45 days from the date of the order. This outer limit was provided in the order to ensure that the parties act upon the assurances given before this Court within the specified time and report compliance. The matter was deferred for passing further order and the same was accordingly, listed on September 4, 2006. On that day, however, it was

brought to my notice that the respondent No.2 did not fulfil his obligation in terms of the assurance given before this Court on 15th June, 2006. Respondent No.2 has been appearing in this court in person all throughout. On 4th September, 2006 respondent No.2 had assured and gave undertaking before this Court that he will appear before the Family Court on 8th September, 2006, on which date consent terms would be filed between him and respondent No.3 inter se and at the same time, the respondent No.3 would receive the further amount of Rs.7 Lakhs from the appellants, in addition to the arrangement to be observed by the respondent No.2 in terms of the consent terms filed between the parties.

3. The grievance of the respondent No.3, which is stated on affidavit is that, although she remained present in the Family Court on the specified date i.e. 8th September, 2006, however, the respondent No.2 did not appear before that court at all. It is the case of the Respondent No.3 that the Respondent No.2 in collusion with Appellants, not only has the audacity of not complying with his obligation flowing from orders dated 15-6-2006 and 4-9-2006 respectively, but they are working in tandem to over reach the court with the sole purpose of harassing

the respondent No.3 and deying her of her rightful claim already conceded by them before this Court.

4. Today when the matter was called out at 11 a.m., the appellant No.2 was present in the court alongwith her advocate on record. The respondent No.2 was not present. He arrived in Court only at 11.15 a.m. In the mean time, it was canvassed on behalf of the appellants that the appellants are more than eager to comply with their obligation as per the assurance noted in the order dated 15th June, 2006-but the pay order in the sum of Rs. 7 Lakhs could not be deposited in the Family Court, as the consent terms were not presented by respondent Nos. 2 and 3 on 8th September, 2006 or till date. Counsel for the appellants submits that the appellants are willing to pay the balance amount of Rs.7 Lakhs to the respondent No.3 alongwith the Consent Terms, to be filed before the Family Court as per the assurance given. In response to this submission, grievance was made on behalf of the respondent No.3 that the appellants and respondent No.2 have adopted such strategy so as to protract the relief available to the respondent No.3. It was also submitted that the attitude of the respondent No.2 is only to gain time and to protract the proceedings so that the

respondent No.3 is not able to enjoy the fruits of the order passed by the Court, or for that matter commitment made by the appellants and respondent No.2 to the Court.

5. After having considered the rival submissions, I am inclined to accept the stand taken by the respondent No.3 that this is yet another attempt made by the parties to protract the matter to harass the respondent No.3 on some flimsy grounds. I am convinced that there is force in the argument that the appellants and respondent No.2 were acting in collusion to subserve their ulterior design. In this backdrop, suggestion was given to the appellants that if they have intention to pay the balance amount of Rs.7 Lakhs to respondent No.3 in terms of the assurances given before this Court on 15th June, 2006, they should be well advised to pay that amount irrespective of whether the Consent Terms are filed before the Family Court between the respondent Nos. 2 and 3 inter se. After taking instruction counsel for the appellants have made statement that the appellants are willing to pay the balance amount of Rs. 7 Lakhs to the respondent No.3 within one week from today, but on condition that the respondent No.3 will invest the said amount in the name of their

grand-children. Besides, the respondent No.3 shall not implicate the appellants in any future litigation for any claim whatsoever. The respondent No.3, who is present in the Court has accepted the conditions put forth by the appellants for paying the balance amount of Rs.7 Lakhs to her unconditionally.

6. In other words, it is agreed between the appellants and respondent No.3 that on payment of balance amount of Rs.7 Lakhs to the respondent No.3, all claims against the appellants will be treated to have been fully settled. The respondent No.3 however, would be free to pursue such remedy, as may be available in accordance with the law, against the respondent No.2, including for claim of return of Stridhan property, if any. Those issues are kept open to be resolved in the proposed proceedings, if resorted to by the respondent No.3, if no amicable settlement between the respondent Nos. 2 and 3 inter se is arrived at in that regard.

7. Accordingly, in so far as the appellants are concerned, on payment of balance amount of Rs.7 Lakhs to the respondent No.3 to be paid by Banker’s cheque/pay order within one week from today and acknowledgement thereof given by the respondent No.3,

the appellants would be entitled to withdraw the pending suit before the trial Court and the respondent No.3 will not oppose such request. Once again it is made clear that withdrawal of the suit will not affect the rights and claims of the respondent No.3 arising out of the matrimonial dispute against the respondent No.2, including the claim for return of Stridhan property or commensurate value thereof against the respondent No.2, if any.

8. It is also placed on record that the respondent No.3 has assured before this court that on receipt of balance amount of Rs. 7 lakhs, she shall invest the entire sum of Rs.9 Lakhs received by her from the appellants in the joint name of her children(grand children of the appellants) either in fixed deposit scheme or for procuring new residential accommodation. That investment will be made in the names of two children born out of the wedlock between the respondent Nos.2 and 3 and the respondent No.3 will be the sole guardian of the two children. The respondent no.3 alongwith the children will be entitled to occupy the said premises for their residential use. Respondent No.2 shall have no concern therewith nor shall he interfere with the occupation of residential premises of respondent No.3

and her children, in any manner, unless allowed to do so by any court of competent jurisdiction.

9. In so far as the respondent No.2 is concerned, it is amply clear that the respondent No.2 has not only committed breach of the assurance given before this Court as recorded in order dated 15th June, 2006 and once again reiterated on 4th September, 2006, of filing Consent Terms before the Family Court, to be signed by the respondent Nos.2 and 3 jointly and also handing over 60 post dated cheques payable monthly in the sum of Rs.13,000/- in favour of the respondent No.3 towards maintenance of the respondent No.3 and the two children. Besides, I am prima facie convinced that the respondent No.2 is trying to overreach the Court in not complying with the assurance and undertaking given before this Court, as recorded in the two orders, as also having failed to appear before the Family Court on the specified date inspite of the assurance given before this Court on 4th September, 2006 for filing Consent Terms and to hand over 60 post dated cheques to respondent No.3 towards maintenance amount. In the circumstances, I am inclined to initiate suo motu contempt action against the respondent No.2 for having committed breach of the undertaking given to

this Court as noted in the orders dated 15th June, 2006 and 4th September, 2006 respectively. That amounts to having committed civil contempt. Accordingly, issue show cause notice to respondent No.2 as to why he should not be proceeded for having committed civil contempt of Court on account of breach of the undertaking given to this Court, as recorded in orders dated 15th June, 2006 and 4th September, 2006 respectively.

10. The respondent No.2 is present in the court. He waives notice and prays for time to file reply to offer explanation about his inability to comply with the undertaking in time. The respondent No.2 shall file reply within two weeks from today.

11. The respondent No.3 shall be made party respondent in the said suo motu contempt proceedings, to be represented by Shri Gorwadkar, advocate on record and Shri Abhyankar Senior advocate who have been appointed as amicus curiae. The respondent No.3 herein may file her reply, if any, within two weeks from the date of receipt of the reply affidavit. The respondent No.2 shall serve the reply affidavit on the advocate on record Shri Gorwadkar on or before 9th October, 2006. Rejoinder, if any, be filed on or

before 6th November, 2006. Place the Suo Moto Contempt proceedings on 8th November, 2006. Paper book of the present Appeal from Order be circulated with the said suo motu contempt petition to be listed on 8-11-2006.

12. In case the balance amount of Rs.7 Lakhs to be paid by the appellants to the respondent No.3 is not realised by the respondent No.3 within one week from today, it will be open to the respondent no.3 to apply to this Court for such directions, as may be necessary.

. In case the balance amount of Rs.7 Lakhs is realised by the respondent No.3 within one week, it will be open to the appellants to approach the trial Court for withdrawal of the suit and also apply before the trial Court for raising of the attachment. The trial Court shall pass appropriate orders on the said application after giving opportunity to the respondent No.3.

13. So far as the appeal from order is concerned, in view of the above arrangement nothing survives for consideration; and instead, the impugned Judgment and order passed by the trial Court will stand

modified in terms of the arrangement arrived at between the appellants and respondent No.3 as recorded earlier. The Appeal from Order is disposed of those terms.

14. At this stage, Mr. Abhyankar points out that except one cheque in the sum of Rs.13,000/- towards the maintenance amount, respondent No.3 has not received any other cheque from the respondent No.2 so far. It will be open to the respondent No.2 to pay the outstanding maintenance amount to the respondent no.3 forthwith and also to ensure regular payment of future maintenance amount, failing which, the Court may consider of initiating action for aggravated contempt on the next date of hearing.

15. The respondent No.2 who is appearing in person undertakes to appear before this Court at the hearing of the said Suo Motu Contempt Petition on 8th November, 2006. He has furnished his latest place of residence which reads thus:

Mr.Dipendra S/o Binoy Dey,
R/o 203, Shanti Niwas, Navghar Road,
Opp.Prabhat Icecream,
Byayander(E)-400 015.

The respondent No.2 submits that for the purpose of serving court notice or affidavits, that may be effected on his office address which is as under:

203, Sunder Niwas,
Opp. Prabhat Ice-cream,
Bhayander(E),
Thane 401 105.

16. Ordered accordingly.